

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2321 of 1990

WITH

CIVIL APPLICATION NO.3928 OF 1996

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes
2. To be referred to the Reporter or not? No
3. Whether Their Lordships wish to see the fair copy of the judgement? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No
5. Whether it is to be circulated to the Civil Judge? No

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GIRDHARLAL C MEHTA

Versus

COMPETENT AUTHORITY

AND DEPUTY COLLECTOR

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Appearance:

Shri HARIN P. RAVAL, Advocate, for the Petitioner.

Shri T.H.SOMPURA, Assistant Government Pleader for the Respondents.

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CORAM : MR.JUSTICE A.N.DIVECHA

Date of decision: 22/04/96

ORAL JUDGEMENT

The order passed by the Competent Authority at Rajkot (respondent No.1 herein) on 30th October 1984 under section 8 (4) of the Urban Land (Ceiling and Regulation) Act, 1976 (the Act for brief) as affirmed in appeal by the order passed by the Urban Land Tribunal at Ahmedabad (respondent No.2 herein) on 6th September 1988 in Appeal No.Rajkot-1321 of 1984 is under challenge in this petition under Article 226 of the Constitution of India. By his impugned order, respondent No.1 declared the holding of the petitioner to be in excess of the ceiling limit by 3736.66 square metres.

2. The facts giving rise to this petition move in a narrow compass. The petitioner filed his declaration in the prescribed form under section 6 (1) of the Act with respect to his holding within the urban agglomeration of Rajkot. It was duly processed by respondent No.1. After observing necessary formalities under section 8 of the Act, by his order passed on 30th October 1984 under sub-section (4) thereof, respondent No.1 came to the conclusion that the petitioner's holding was in excess of the ceiling limit by 3736.66 square metres. Its copy is at Annexure-A to this petition. The aggrieved petitioner carried the matter in appeal before respondent No.2 under section 33 of the Act. It came to be registered as Appeal No. Rajkot-1321 of 1984. By the order passed on 6th September 1988 in the aforesaid appeal, respondent No.2 dismissed it. Its copy is at Annexure-B to this petition. The aggrieved petitioner has thereupon approached this court by means of this petition under Article 226 of the Constitution of India for questioning the correctness of the order at Annexure-A to this petition as affirmed in appeal by the appellate order at Annexure-B to this petition.

3. Though the petitioner has raised the contention to the effect that the petitioner filed his declaration in the prescribed form on behalf of his joint family, at the time of hearing, learned Advocate Shri Raval for the petitioner has on instructions not pressed that contention.

4. Learned Advocate Shri Raval for the petitioner has however urged that the constructed properties were in existence prior to coming into force of the Act and they were constructed after obtaining the necessary building permission from the concerned local authority. According to learned Advocate Shri Raval for the petitioner, the area represented by the constructed properties should be excluded from the holding of the petitioner in view of

the binding ruling of the Supreme Court in the case of MEERA GUPTA v. STATE OF WEST BENGAL reported in AIR 1992 Supreme Court at page 1567. As against this, learned Assistant Government Pleader Shri T.H.Sompura for the respondents has urged that the petitioner has not produced any evidence regarding existence of the constructed properties prior to coming into force of the Act after obtaining the necessary building permission from the concerned local authority. Thereupon, on behalf of the petitioner, Civil Application No.3928 of 1996 is made for additional evidence showing that the properties in question existed prior to coming into force of the Act. Learned Assistant Government Pleader Shri Sompura has submitted that such additional evidence need not be permitted to be taken into consideration in this petition under Article 226 of the Constitution of India as the petitioner had all opportunities to produce the same before respondent No.1 at the time of hearing.

5. It may be noted that the application for additional evidence has been made by and on behalf of the petitioner for the purpose of showing that the constructed properties were in existence prior to coming into force of the Act and that they were constructed after obtaining the necessary building permission from the concerned local authority. In other words, the petitioner wants to produce evidence to show that the constructed properties were in existence in an authorised manner prior to coming into force of the Act.

6. It is not in dispute that the constructed properties were shown as such in the declaration in the prescribed form filed by the petitioner. It cannot be gainsaid that such declaration has to be filed with respect to the holding of the landholder as on the date of coming into force of the Act, that is, as on 17th February 1976. If in such declaration are shown constructed properties, their existence as such prior to coming into force of the Act will have to be presumed. If they were not constructed properties prior to coming into force of the Act, they would not have figured as such in the declaration in the prescribed form under section 6 (1) of the Act. There would therefore be no prejudice to the respondents herein in production of the necessary evidence regarding existence of the constructed properties prior to coming into force of the Act.

7. The petitioner has tried to give cogent and convincing reasons for his inability to produce the necessary evidence at the time of hearing before respondent No.1. He has stated in his application for

additional evidence that he resided in Sudan with his two sons at the relevant time and he could not therefore arrange for production of the relevant evidence before respondent No.1 at the time of hearing. With his application for additional evidence he has produced one certificate issued by Omdurman Indian Community at Omdurman in Sudan on 1st October 1988 showing that the petitioner was residing in Sudan even at the relevant time and also in the years from 1975 to 1979. It appears that because of his residence in Sudan he could not produce the necessary material showing existence of the constructed properties prior to coming into force of the Act in an authorised manner. He can be said to have made out a good ground for his inability to produce the necessary additional evidence before respondent No.1 at the time of hearing. I think he should be permitted to produce such additional evidence for claiming the benefit of the aforesaid binding ruling of the Supreme Court in the case of MEERA GUPTA (supra).

8. On the basis of the aforesaid evidence, it would become necessary to find out the extent of the constructed area to be excluded from his holding in view of the aforesaid binding ruling of the Supreme Court in the case of MEERA GUPTA (Supra). It appears that the petitioner could not produce the relevant material regarding applicability of the Ribbon Development Rules prohibiting construction of any kind in certain land abutting what is known as a major district road or a highway. I think the petitioner should be given an opportunity to lead the necessary evidence in that regard. He should also be given an opportunity to show that a road, if any, passes through one of his vacant lands. This can best be done by respondent No.1. The matter will have to be remanded to him for restoration of the proceeding to file and for his fresh decision according to law in the light of this judgment of mine. The impugned orders at Annexures-A and B to this petition will have therefore to be quashed and set aside for the purpose.

9. In view of my aforesaid discussion, I am of the opinion that the Civil Application for additional evidence deserves to be accepted. The impugned orders at Annexures-A and B to this petition deserve to be quashed and set aside. The matter deserves to be remanded to respondent No.1 for restoration of the proceeding to file and for his fresh decision according to law in the light of the judgment of mine and in the light of the additional evidence produced in this case and to be produced before him.

10. In the result, Civil Application No.3928 of 1996 is accepted. This petition is also accepted. The order passed by the Competent Authority at Rajkot (respondent No.1 herein) on 30th October 1984 at Annexure-A to this petition as affirmed in appeal by the appellate order passed by the Urban Land Tribunal at Ahmedabad on 6th September 1988 in Appeal No.Rajkot-1321 of 1984 at Annexure-B to this petition is quashed and set aside. The matter is remanded to respondent No.1 for restoration of the proceeding to file and for his fresh decision according to law in the light of this judgment of mine. Rule issued on the Civil Application is made absolute. Rule issued on this petition is also made absolute to the aforesaid extent with no order as to costs.

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